



February 5, 2001

Mr. John M. Deaver, II
County Attorney
Hall County
207 South 6th Street
P.O. Box 699
Memphis, Texas 79245

OR2001-0458

Dear Mr. Deaver:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 143922.

The County Clerk of Hall County (the "county clerk"), whom you represent as County Attorney, received in April 2000 a request for all digital real property records and indexes, preferably on CDROM, but that, if reproduction on CDROM is not possible, any digital form. The requestor has clarified that the requestor is not seeking copies of any real property records which are not already stored in digital format.¹ By correspondence received by you on November 7, 2000, the requestor asks for "a price for purchasing the digital indexes in any digital form available." The requestor further states that "Backup tapes will meet our request." The requestor asserts that:

¹The April 2000 request was the subject of a prior decision of this office. See Open Records Letter Ruling No. 00-2371 (2000) (copy enclosed). Based on the information provided to this office at the time, we stated in that decision that this office had no knowledge of the existence of real property records and indexes in any form other than hard copies and microfilm. In connection with the present request, you inform this office that responsive information in fact exists in digital form on a daily backup tape held by the county clerk.

The price is to be actual cost of reproduction. The records have already been digitized - the process will merely be making a copy of digital information that is already in existence.

You explain that:

Hall County maintains indexes for its court records, birth and death records and real property records through a contract with Government Service Automation, Inc. ("GSA"). The County's index system is based on software licensed from GSA under a Non-Exclusive License Agreement [copy enclosed]. The data that forms each of the County's indexes, including the real property records index, is co-mingled [sic] with GSA's software. Hall County's contract with GSA does not require GSA to provide the County with the capability to digitally copy any of the County's indexes, only with the ability to search electronically and generate paper copies. Hall County does not have the ability to digitally copy or backup its indexed data by category, daily backup tapes include data from all of the indexes combined.

The county clerk has informed this office that her ability to herself provide information responsive to the request is limited to the county clerk making a duplicate of the above-referenced daily backup tape. The requestor thus apparently seeks a copy of that tape and is willing to pay the "actual cost of reproduction." In asserting section 552.110 of the Act for GSA's software information contained on the tape, you ask whether the county clerk must release to the requestor a copy of the daily backup tape.²

In addition to GSA's software information, you represent that such a duplicate tape would contain, commingled with the real property records information that the requestor seeks, both court record information and information from birth and death records.

Information that is "collected, assembled, or maintained . . . for the judiciary" by a governmental body acting as an agent of the judiciary is not subject to the Act but is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." Gov't Code § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035); *cf.* Attorney General Opinions DM-166 (1992), H-826 (1976); Open

²You raise section 552.110 for "certain software and intellectual property embedded" in the daily backup tape. You have made no arguments in support of the section 552.110 assertion. However, you represent to this office that you notified GSA of the request pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). To date, GSA has submitted no comments to this office in response to the section 552.305 notice.

Records Decision Nos. 610 (1992), 572 (1990), 513 (1988), 274 (1981). In collecting, assembling, or maintaining court records, the county clerk acts as an agent of the judiciary. Thus, the court record information, which comprises a portion of the information on the daily backup tape, is not information that is subject to disclosure under the Act.

Moreover, at least portions of the remaining information on the daily backup tape are subject to and made confidential under the Act. *See* Gov't Code § 552.115 (providing for confidentiality of certain birth and death records and certain birth and death record indexes). The Act prohibits the county clerk from releasing to the requestor this confidential information. *See* Gov't Code § 552.352. You represent that the county clerk does not have the technological ability to herself separate and produce in electronic form only the real property index information.³ Based on your representations, we thus conclude that the county clerk must not release to the requestor a copy of the daily backup tape.⁴

We understand that although the county clerk does not herself have the technological ability to produce the requested information in an acceptable form other than by making a duplicate of the daily backup tape, the clerk informs us that GSA in fact has the technological ability to produce the information responsive to the request in the format request, including the technological ability to separate the software, court records, and birth and death record data

³Section 552.228 of the Government Code states in relevant part:

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

- (1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;
- (2) the governmental body is not required to purchase any software or hardware to accommodate the request; and
- (3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

Gov't Code § 552.228(b). You represent that the county clerk's technological ability to "produce a copy of the requested information in the requested medium" is limited to making a duplicate of her entire daily backup tape. Further, you indicate that the county clerk's existing hardware and software is not capable of separating and digitally duplicating only the responsive real property records contained on the tape. We thus understand that for the county clerk to herself provide the information in the requested medium, the county clerk would be required to purchase software and/or hardware.

⁴In light of this conclusion, we need not reach the issue of whether GSA's software information on the daily backup tape is excepted from disclosure by section 552.110 of the Government Code.

that is not responsive to the request. Thus, in Open Records Letter Ruling No. 00-2371 (2000), this office concluded that the county clerk must provide to the requestor the written statement required by section 552.231 of the Act.

The information you have submitted indicates that the requestor was provided a letter from GSA which estimates GSA's charges for programming or manipulation of the data in order to produce the requested information in the requested format.⁵ We understand that the requestor disputes GSA's estimate. You thus also ask this office whether the county clerk may charge the requestor the county clerk's costs for programming or manipulation of the data (*i.e.*, the amount GSA would charge the county clerk for producing the requested information in the requested format). This question pertains to the Act's cost provisions. We advise that questions or complaints pertaining to the Act's cost provisions should be directed to Hadassah Schloss at the General Services Commission, who can be reached by telephone at (512) 475-2497. Accordingly, we do not address your question pertaining to the Act's cost provisions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

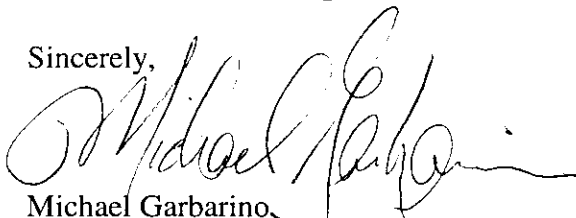
⁵We note that the correspondence from GSA does not provide the requestor with all of the information required to be contained in the written statement that the county clerk must provide the requestor. *See* Gov't Code § 552.231 (specifying the information that must be included in the written statement). As we stated in Open Records Letter Ruling No. 00-2371 (2000), if the county clerk has not yet done so, a written statement that fully complies with section 552.231 of the Act must be provided to the requestor.

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over a horizontal line.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 143922

Encl. Open Records Letter Ruling No. 00-2371 (2000)

cc: Ms. Terri Wilmoth
Texas Document Imaging Retrieval
P.O. Box 4010
Palestine, Texas 75802